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October 19, 2004

Mary L. Cottrell, Secretary  
Department of Telecommunication and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02202

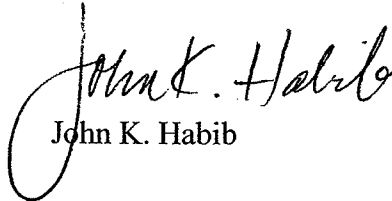
Re: D.T.E. 04-78 - Petition of Commonwealth Electric Company d/b/a NSTAR  
Electric for Approvals Relating to the Assignment of Power Purchase Agreements  
with Dartmouth PPA Holdings LLC

Dear Secretary Cottrell:

Enclosed please find the responses of Commonwealth Electric Company d/b/a NSTAR Electric ("Commonwealth") to discovery questions asked by the Attorney General and the Department of Telecommunications and Energy in the above-referenced proceeding, as listed on the following Discovery Log. Please note that certain documents that are responsive to these questions are confidential and are being filed under separate cover with the Attorney General and the Hearing Officer only. Please also note that the Company's response to AG-1-29 includes a **BULK** attachment, which because of its size, will be filed under separate cover on Wednesday morning, October 20, 2004.

Thank you for your attention to this matter.

Very truly yours,

  
John K. Habib

Enclosures

cc: Service List  
Joan Foster Evans, Hearing Officer (2)  
Colleen McConnell, Assistant Attorney General (2)

# LOG OF RESPONSES FILED

D.T.E. 04-78

October 19, 2004

AG-1-1	Filed Herewith	Attachments AG-1-1 (a), (b) and (c)
AG-1-2		
AG-1-3		
AG-1-4		
AG-1-5		
AG-1-6		
AG-1-7	Filed Herewith	
AG-1-8	Filed Herewith	
AG-1-9		
AG-1-10		
AG-1-11		
AG-1-12		
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AG-1-27		
AG-1-28		
AG-1-29	Filed Herewith	Attachment AG-1-29 <b>BULK</b>
AG-1-30	Filed Herewith	Attachment AG-1-30 <b>CONFIDENTIAL</b>

# **Attachment AG-1-1(a)**

**SPECIAL SERVICE AGREEMENT**

**BETWEEN**

**DARTMOUTH POWER ASSOCIATES  
LIMITED PARTNERSHIP**

**AND**

**COMMONWEALTH ELECTRIC COMPANY**

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ARTICLE VII	METERS AND METERING
ARTICLE VIII	MISCELLANEOUS PROVISIONS

AGREEMENT made this 16th day of June, 1992 by and between  
COMMONWEALTH ELECTRIC COMPANY ("Commonwealth"), a Massachusetts corporation  
having a place of business at 2421 Cranberry Highway, Wareham, Massachusetts 02571, and  
DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP ("Dartmouth"), a limited  
partnership with its principal place of business at 8 Newbury Street, Suite 5, Boston, Massachusetts.

ARTICLE I  
DESCRIPTION OF SERVICE

- 1.1 Dartmouth is the owner of a 67.6 MW natural-gas fired electric generating facility located in Dartmouth, Massachusetts (the "Unit"). The Unit is located within the service territory of Commonwealth, and Commonwealth agrees, subject to the terms set forth in this Agreement, to provide Dartmouth with Back-Up and Maintenance Service (as defined below). Service provided under this Agreement will be provided at the 115 KV voltage level under normal circumstances, or at the 13.2 KV voltage level when the 115 KV supply is unavailable, to provide the Unit's electric power requirements in order to operate lights, pumps, equipment, and other facilities and devices located at the Unit, when the Unit is out of service. Such own load requirement is customarily called "Station Service".
- 1.2 Back-Up Service is defined as electric service provided by Commonwealth to provide Station Service, when the Unit is unexpectedly out of service.
- 1.3 Initially, Commonwealth agrees to supply Dartmouth with a minimum quantity of Station Service to be referred to as the Initial Back-Up Capacity. Commonwealth and Dartmouth agree that the Initial Back-Up Capacity to be supplied by Commonwealth is 1200 KVA.
- 1.4 Maintenance Service is defined as electric service provided by Commonwealth to provide Station Service when the Unit is taken out of service for scheduled maintenance.
- 1.5 Dartmouth must apply for Maintenance Service with Commonwealth at least three months in advance of any scheduled outage, which outage shall not normally occur during summer or winter peak periods as determined by Commonwealth. If Dartmouth desires service during such peak periods, Commonwealth will provide such service under the provisions of Back-Up Service.
- 1.6 Commonwealth shall respond to Dartmouth's application for Maintenance Service within one month following receipt by Commonwealth of a completed application.

ARTICLE II  
TERM

- 2.1 This Agreement shall become effective upon the date first above-written and shall continue for an initial term of one (1) year and thereafter until terminated by the giving of thirty (30) days written notice of termination by one party to the other.

ARTICLE III  
SUPPORT OF FACILITIES

- 3.1 Dartmouth shall own, operate and maintain, in a manner acceptable to Commonwealth and solely at the cost of Dartmouth, all facilities at and beyond Dartmouth's side of the Delivery Point-13.2 KV and the Delivery Point-115 KV (both as defined below) deemed necessary and appropriate by Commonwealth to receive and utilize Commonwealth's service. Maintenance of such facilities shall be subject to the review and approval of Commonwealth, but shall be and remain solely the obligation and responsibility of Dartmouth. Commonwealth shall have the right to inspect and test all such facilities from time to time during the term of this Agreement.
- 3.2 Upon notification by Commonwealth to Dartmouth that the nature of Dartmouth's load is causing any condition on Commonwealth's system which results in an unacceptable deterioration of the quality of electric service to other customers of Commonwealth, as determined solely by Commonwealth, Dartmouth shall promptly modify its electric facilities at its own expense, or, at Commonwealth's option, shall reimburse Commonwealth for its reasonable expenses for modification of Commonwealth's facilities, to the extent deemed necessary by Commonwealth to eliminate such adverse conditions on its system.

ARTICLE IV  
DELIVERY

- 4.1 The delivery point for service supplied by Commonwealth hereunder via the 13.2 KV circuit shall be the point of connection of the Dartmouth owned conductors to Commonwealth's system on Circuit 541 at Dartmouth's Pole# 849/P1 on Energy Road ("Delivery Point-13.2 KV"). Such service shall be delivered in the form of three phase, four wire, sixty hertz alternating current at 13,200 volts nominal. The parties recognize that it will be necessary to designate a different delivery point in the future when the 13.2 KV electric service is provided via an underground circuit. At such time that 13.2 KV service is provided underground, the delivery point will be at Dartmouth's 13.2 KV primary metering cubicle.
- 4.2 The delivery point for service supplied by Commonwealth hereunder via the 115 KV circuit shall be the 115 KV line side connection to the Dartmouth owned circuit breaker, located at the Unit's 115 KV switching station ("Delivery Point-115 KV"). Such service shall be delivered in the form of three phase, three wire, sixty hertz alternating current at 115,000 volts nominal.
- 4.3 The delivery of service at any instant of time will be at one point only with an open transition dead bus transfer occurring when there is a change in the delivery point.
- 4.4 The delivery of service will normally be provided via the Delivery Point-115 KV. Only at such times that the Delivery Point-115 KV is unavailable, or at the direction of Commonwealth, will service be provided via the Delivery Point-13.2 KV. If at any time Dartmouth desires a change in the delivery point of service, Dartmouth shall first notify and request permission from Commonwealth to insure that no system conditions exist which would prevent utilizing the requested source.

**ARTICLE V**  
**RATES AND CHARGES**

5.1 The Back-Up Capacity for the current billing period shall be the greater of : (1) the Initial Back-Up Capacity mutually agreed upon, or (2) the maximum 15-minute demand upon Commonwealth's system for Back-Up Service in KVA, established in the peak period of the current billing month. The peak period shall be as defined in Commonwealth's Rate G-3 as in effect from time to time.

5.2 Back-Up Service charges per month shall be the sum of the charges described in items A through F of this Section 5.2:

A. Administrative Charge: \$300.00

B. Customer Charge: \$1,000.00

C. Distribution Capacity Charge:

\$5.27 per KVA multiplied by the maximum 15-minute KVA demand established at any time during the billing month.

D. Generation and Transmission Capacity Charge:

The Generation and Transmission Capacity Charge shall be \$0.48 per KVA times the sum of the daily maximum 15-minute KVA back-up demands established during the peak period of the billing month multiplied by the appropriate following monthly factor:

<u>Billing Month</u>	<u>Factor</u>
January, July, August, December	2.10
Remaining months	0.45

However, the minimum annual charge for a calendar year period for Generation and Transmission Capacity shall not be less than \$12.54 multiplied by the maximum Back-Up Capacity established during such calendar year. The minimum annual charge for the initial calendar year period shall be prorated commensurate with the actual months for which service was provided.

E. Energy Charges:

Energy charges for Back-Up Service shall be billed based on the primary voltage level energy prices per KWH from the Commonwealth's Power Purchase Rate less the Fuel Charge rate, each as applicable during the billing month.



**F. Other Charges:**

Back-Up Service is subject to the Commonwealth's Fuel Charge (FC) and Energy Conservation Service Charge (ECS) as in effect from time to time.

G. Charges in Paragraphs C. and D. above are subject to change from time to time in accordance with DPU approval of the Commonwealth's Marginal Cost Study.

**5.3 Maintenance Service charges per month shall be in accordance with the following:**

Maintenance Service shall be the sum of the charges described in items (C), (E), and (F) of Section 5.2 and shall exclude charges set forth in the Generation and Transmission Capacity Charge of Section 5.2(D). For billing purposes, Maintenance Service shall be included with Back-Up Service, if any, when determining charges under Section 5.2 (C) Distribution Capacity Charge, (E) Energy Charges, and (F) Other Charges as listed above excluding ECS charges.

**ARTICLE VI**  
**BILLING AND PAYMENTS**

- 6.1 For purposes of determining appropriate billing quantities and computing billings to Dartmouth hereunder, meter readings reflecting service to the Unit via the 115 Kv Circuit shall be reduced by a factor of 2.9 %, and shall then be combined with meter readings reflecting service to the Unit via the 13.2 Kv Circuit if any, such that the result of the combination is equivalent to measuring service at a single delivery point.
- 6.2 All bills rendered hereunder are net and payable upon presentation. Any bill not paid within 25 days from the date issued shall be subject to a late payment charge at the rate of one and one-half percent (1 1/2%) per month on the unpaid balance from the date issued until the date of payment. Such late payment charge and terms of payment shall be modified as necessary to comport with Commonwealth's Terms and Conditions as in effect from time to time.

**ARTICLE VII**  
**METERS AND METERING**

- 7.1 Commonwealth shall supply, own and maintain the meters and related equipment it deems necessary to measure electricity supplied to the Site. Dartmouth agrees to supply one or more locations at the Site suitable to Commonwealth for the installation of Commonwealth's metering equipment, at no cost to Commonwealth.
- 7.2 In the event that a meter should fail to register the full amount of energy supplied or the maximum demand, Commonwealth may bill Dartmouth on the basis of its most accurate estimates. Such estimates shall be binding upon both Commonwealth and Dartmouth.

**ARTICLE VII**  
**MISCELLANEOUS PROVISIONS**

- 8.1 This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and all previous agreements, discussions, communications and correspondence with respect to the subject matter hereof are superseded by the execution of this Agreement.
- 8.2 This Agreement is not intended to modify or affect any rights or responsibilities of the parties pursuant to agreements between Commonwealth and Dartmouth for purchase of capacity and energy from the Unit, and is intended solely for the purpose stated above in Section 1 to provide the Unit with Back-Up and Maintenance service.
- 8.3 This Agreement may not be modified or amended except in writing signed by or on behalf of both parties by their duly authorized officers.
- 8.4 All notices required or permitted under this Agreement shall be in writing, unless otherwise specifically set forth herein, and shall be deemed to have been properly given when delivered personally or deposited in the U. S. mail, first class postage prepaid, addressed as follows, or to such other person or address as may be designated by a party at any time and from time to time, in accordance herewith:

**If to Commonwealth:**

Manager Power Supply Administration  
Commonwealth Electric Company  
2421 Cranberry Highway  
Wareham, MA 02571

**If to Dartmouth:**

Dartmouth Power Associates Limited Partnership  
One Energy Road  
North Dartmouth, MA 02747  
Attention: James C. Gordon

- 8.5 The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts.
- 8.6 The price to be paid for electricity hereunder and all other terms hereof shall be subject to review and determination by the MDPU under applicable statutes of the Commonwealth of Massachusetts or regulations of the MDPU.
- 8.7 Except as otherwise provided in this Agreement, Commonwealth's Terms and Conditions as in effect from time to time shall apply to the terms of this Agreement.
- 8.8 This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto, provided, however, that no assignment by Dartmouth or any successor or assignee of Dartmouth of its rights and obligations hereunder shall be made or become effective without the prior written consent of Commonwealth in each case obtained.

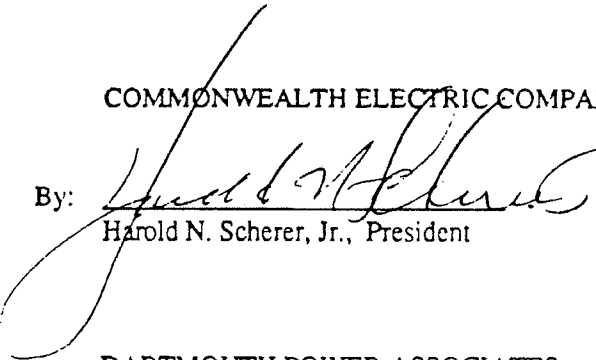
- 8.9 This Agreement and all rights and obligations of the parties hereto are subject to all applicable state and federal laws and all duly promulgated orders and duly authorized actions of governmental authorities effectively exerting jurisdiction in the premises.
- 8.10 Commonwealth hereby reserves the right to terminate or interrupt or reduce the electric service and/or the voltage thereof supplied to Dartmouth hereunder, in the event of the breach of a material obligation of Dartmouth hereunder without recourse to Dartmouth, or if it determines, in its sole discretion, that continuing such service may adversely affect the quality of service to other customers of Commonwealth, or may adversely affect the public safety or the safety of Commonwealth's personnel or the condition of Commonwealth's property.
- 8.11 Commonwealth shall not be responsible for performance hereunder or incur any liability, cost or expense of any kind, including that for personal injury (including death) or property damage, in the event that such performance is prevented, in whole or in part, by any of the following: the statute or regulation or order of any court or public authority having or purporting to have authority over such performance; the loss, diminution or impairment of electric supply from Commonwealth's generating plants or generation suppliers, or the systems of others with which it is interconnected; a break or fault in Commonwealth's transmission or distribution system; by the failure or improper operation of Commonwealth's transformers, switches or other equipment necessary for electric transmission and distribution; or by reason of a storm, flood, fire earthquake, explosion, civil disturbance, labor dispute or strike, an Act of God or public enemy, or any other cause beyond the reasonable control of Commonwealth. In the event of the occurrence of any of the foregoing, Commonwealth shall use reasonable efforts to overcome such cause, to resume full performance.
- 8.12 The parties hereto acknowledge and agree that Commonwealth shall not, in any event except that of its own negligent or intentional acts or omissions, be liable to any party for any direct damages, whether arising in tort, contract or otherwise, associated with the performance of its obligations under this Agreement, or with the exercise of any of its rights as set forth herein. In no event whatsoever will Commonwealth be liable to any party for consequential, indirect, or special damages.
- 8.13 Dartmouth assumes full responsibility for the use of electricity furnished by Commonwealth hereby, and for the condition, suitability, and safety of any and all wires, cables, devices and appurtenances energized or related equipment on Dartmouth premises, or owned or controlled by Dartmouth. Dartmouth shall indemnify and hold harmless Commonwealth from and against any and all claims or actions of any nature, including such claims or actions for personal injury (including death) or property damage arising directly or indirectly from the operation or presence of the aforementioned wires, cables, devices, appurtenances and related equipment (which are not the property of Commonwealth); or arising directly or indirectly from the failure of Dartmouth to perform its duties and obligations as set forth in this Agreement; or arising directly or indirectly from the improper use of the electricity or the aforementioned wires, cables, devices and appurtenances or equipment.

8.14 Any and all equipment or facilities furnished by Commonwealth hereunder, unless specified otherwise, shall be and remain the property of Commonwealth, and, if placed on the property of Dartmouth, Dartmouth shall be responsible for the safekeeping of the same, and further Dartmouth shall make reasonable efforts to protect the same from damage or interference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the day and year first above-written.

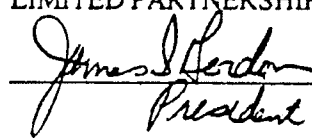
COMMONWEALTH ELECTRIC COMPANY

By:

  
Harold N. Scherer, Jr., President

DARTMOUTH POWER ASSOCIATES  
LIMITED PARTNERSHIP

By:

  
President

*Emil Dartmouth, Inc. its  
General Partner*

# **Attachment AG-1-1(b)**

## **ENERGY ARBITRAGE AGREEMENT**

This Agreement is entered into as of the 30th day of October, 1996, between DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP ("Dartmouth"), a Massachusetts limited partnership, and COMMONWEALTH ELECTRIC COMPANY ("ComElectric"), a Massachusetts corporation, both referred to as "Party" or "Parties". The Parties hereby agree as follows:

### **1. Purpose and Scope of Agreement**

1.1 This Agreement shall serve as the "Master Agreement" governing energy arbitrage transactions (each an "Arbitrage Transaction") to be entered into between the Parties which shall be described more specifically by energy arbitrage confirmation notices, (each a "Confirmation Notice"), in the general form attached hereto as Exhibit "A".

1.2 Each Arbitrage Transaction shall be documented by a Confirmation Notice which shall become part of this Agreement. Any discrepancy between this Agreement and any Confirmation Notices shall be resolved by relying upon the Confirmation Notices. Both Parties recognize that any number of Confirmation Notices may be in effect and operation at one time; and that each shall operate independently of one another unless otherwise agreed by the Parties.

1.3 This Master Agreement shall allow and govern arrangements by the Parties to sell the capacity and output of the Dartmouth facility (each a "Secondary Transaction") when electricity is purchased by ComElectric to replace its output.

### **2. Definitions**

2.1 "Business Day" shall mean any day other than a Saturday, Sunday, or legal holiday in Boston, Massachusetts.

2.2 "Gas" shall mean natural gas purchased by Dartmouth in order to satisfy its obligations under the terms of its Power Purchase Agreement between Dartmouth and ComElectric dated September 5, 1989, as amended (the "Power Agreement").

### **3. Confirmation and Notice Procedures**

Prior to entering into an Arbitrage Transaction, Dartmouth will send ComElectric a Confirmation Notice by telecopy transmission. The Confirmation Notice shall reflect the agreed-upon terms including: 1) arrangements for the sale of Gas; 2) arrangements for the purchase of replacement energy; 3) projected net and gross revenues from the Arbitrage Transaction; and 4) arrangements for the sale of the capacity and/or output of the Dartmouth facility (the Secondary Transaction). Dartmouth will provide ComElectric with documentation covering the Gas sale and Dartmouth's Gas and transportation costs. ComElectric will provide Dartmouth with documentation covering the replacement energy purchase.

#### 4. Quantities

4.1 Dartmouth will sell and deliver the Gas for the term specified in the applicable Confirmation Notice.

4.2 ComElectric will purchase and receive the replacement energy for the term specified in the applicable Confirmation Notice.

#### 5. Revenue Sharing

5.1 Dartmouth will pay ComElectric an "Energy Penalty" which is the difference in cost of the Dartmouth energy if the plant was dispatched under the terms of the Power Agreement, and the cost to replace the Dartmouth energy. The Parties agree to share the remaining profits after deducting the Energy Penalty (if any) on an equal, 50/50 basis. The total amount Dartmouth will pay ComElectric will be determined as the sum of:

**Shared Profit + Energy Penalty**, where:

**Shared Profit** =  $50\% \times (((\text{Gas Revenues} - \text{Gas Cost}) \times (\text{Dispatch } \%)) - \text{Energy Penalty})$ , where:

**Gas Revenues** = the total revenues received by Dartmouth for the sale of its firm natural gas supply and transportation rights pursuant to the applicable Confirmation Notice;

**Gas Cost** = term of the Arbitrage Transaction in days x the daily gas volume x (Variable Fuel Supply Rate (in \$/MMBtu) + Variable Transportation Throughput Rate (in \$/MMBtu);

**Dispatch %** = the percentage that the Dartmouth facility is deemed to be dispatched online (excluding outages) in the absence of this Agreement, as shown in the applicable Confirmation Notice;

**Energy Penalty** =  $(\text{Replacement Energy Cost} - \text{Energy Cost}) \times \text{Energy} \times \text{Dispatch } \%$ , where:

**Replacement Energy Cost** = \$/MWh cost to replace the Dartmouth energy as shown in the applicable Confirmation Notice;

**Energy Cost** = Variable Fuel Supply Rate (assuming index adjustment and accounting for "pipeline gas" amounts) + Variable Fuel Transportation Throughput Rate (assuming sum of pipeline transportation rates) expressed in ¢/kwh x 1000;  
where:

Variable Fuel Supply Rate and Variable Fuel Transportation Throughput Rate for the period are as defined in the Power Agreement and calculated as if this Master Energy Arbitrage Agreement were not in effect;

**Energy** = the amount of energy required to replace the output of the Dartmouth facility calculated as the number of hours times the temperature adjusted maximum claimed capability for the Dartmouth facility;

provided, however, that the variable Fuel Supply Rate and the Variable Fuel Transportation Throughput Rate for the Term shall only reflect charges actually incurred by Dartmouth, and in no event shall reflect charges greater than those that would otherwise be incurred by ComElectric under the Power Agreement, unless Dartmouth and ComElectric mutually agree otherwise.

A sample calculation showing the above calculations and Confirmation Notice is attached.

5.2 The Parties agree that the following adjustments may impact the revenue calculations and the revenue sharing between the Parties shall not be subject to adjustment for any other reason unless otherwise agreed to:

(a) For any Gas volumes called on by Yankee Gas Company under the terms of its Winter Peaking Firm Gas Sale Agreement with Dartmouth dated as of June 6, 1994, the Gas Revenues will include the price of Gas sold to Yankee and the volumes taken by Yankee. The price of Gas sold to Yankee will be the No.2 oil price that Dartmouth receives from Yankee Gas under the Winter Peaking Firm Gas Sale Agreement, which shall be documented by Dartmouth and disclosed to ComElectric.

(b) The impact of a scheduled or unscheduled outage of the Dartmouth facility will be netted from the Gas Revenue calculation. For example, if the Dartmouth facility is not available then no energy penalty or shared profit will be calculated for the period that the facility is unavailable. Dartmouth shall report any unavailability of its facility to ComElectric or its dispatch agent.

(c) If a transporting pipeline claims force majeure or puts in place a pipeline restriction or limitation (such as not allowing secondary deliveries whereby delivery of gas which is the subject of an executed Confirmation Notice is precluded), the Gas Revenues will reflect the price that the Gas is sold for once the event of force majeure or the limitation or restriction is removed or the price the gas is sold for if an alternate delivery point is used. If Dartmouth is required to use an alternate delivery point because of an event of force majeure or pipeline restriction or limitation on a transporting pipeline, Gas Revenue will reflect the price received by Dartmouth at the alternate delivery point.

(d) Dartmouth will not sell more than its delivered gas contract volume on any pipeline (less pipeline fuel losses) as defined in Section 2.3 of the Power Agreement. Depending on the point of sale, the total sales volume may be more or less than Dartmouth's 14,010 MMBtu/day of delivery capacity on Algonquin.

(e) If the Dartmouth facility is required to undergo a NEPOOL claimed capability test, then the facility will be dispatched as if no Arbitrage Transaction were in effect. The facility will be dispatched and ComElectric will pay for the electric energy as per the terms of the Power Agreement.



5.3 If the Secondary Transaction involves a sale of the Dartmouth facility capacity and output to ComElectric as specified in the Confirmation Notice, the Parties agree that the Dartmouth facility shall be subject to dispatch by NEPOOL as follows:

(a) The Dartmouth facility shall be made available for dispatch utilizing substitute gas supplies or .05% Sulfur #2 oil, and such dispatch shall be subject to the following conditions: (i) Dartmouth is not required to burn oil for more than 500 equivalent full load hours during the five winter months beginning November 1st; (ii) Dartmouth is not required to burn oil for more than 3 consecutive days if it is unable, despite Dartmouth's best efforts, to refill its oil storage tank during this period. If the Dartmouth facility is not available for dispatch for reasons relating to (i) or (ii) above, or if the facility is unable to attain its maximum claimed capability, the Dartmouth facility will be considered as being available for the purpose of calculating payments to Dartmouth under the terms of the Power Agreement. The Parties further agree that the Dartmouth facility's NX-12 form will not change unless mutually agreed to or otherwise required by NEPOOL.

(b) The Dartmouth facility shall be made available for dispatch utilizing substitute gas supplies or .05% Sulfur #2 oil, at the rate specified in the applicable Confirmation Notice. Dartmouth will report applicable fuel price changes to the dispatch agent, as requested by ComElectric. ComElectric will pay Dartmouth at the rate specified in the applicable Confirmation Notice for electric energy produced at the facility, and such payment shall be made at the time payment would be made to Dartmouth for the month that includes the term, but only for electric production requested by ComElectric or its dispatch agent, regardless of whether Dartmouth has burned #2 oil or gas to produce such electricity. If Dartmouth's cost of #2 oil exceeds \$1.15/gallon, then the dispatch rate and the price that ComElectric will pay for the electric energy will be set at the actual oil cost (in \$ per gallon) times 7.24 times 8.583.

5.4 During the term of each Arbitrage Transaction documented by a Confirmation Notice, ComElectric will pay no gas commodity charges or transportation commodity charges under the Power Agreement. For further clarity, ComElectric will not pay Dartmouth for any variable charges related to the purchase and transportation of natural gas under the gas supply and transportation contracts specified in the Power Agreement. All other payments will continue to be made to Dartmouth under the Power Agreement.

5.5 During the term of each Arbitrage Transaction documented by a Confirmation Notice, Dartmouth will not have Extra Capacity, as defined in Section 3 of the Third Amendment to the Power Agreement.

## **6. Billing and Payment**

6.1 By the tenth (10th) day of each calendar month following a month in which the Parties entered into an Arbitrage Transaction(s), ComElectric will provide Dartmouth

with a written statement showing the Energy Replacement Cost. By the fifteenth (15th) day of each calendar month following a month in which the Parties entered into an Arbitrage Transaction(s), Dartmouth shall provide ComElectric with a written statement showing the total amount due from Dartmouth to ComElectric in connection with the Arbitrage Transaction(s).

6.2 Dartmouth will pay to ComElectric the stated total amount due by Automated Clearing House transfer or wire transfer, pursuant to ComElectric's invoice instructions, by the last day of the calendar month in which the statement was rendered, provided that if the last day is not a Business Day, payment is due on the next Business Day following that date.

6.3 Any payments due to Dartmouth from ComElectric will be governed by and paid in accordance with the terms of the Power Agreement.

6.4 In the event of a bona fide dispute regarding an amount owed, the Party that has been billed such amount shall have the right to withhold the amount in dispute until such dispute is settled or resolved, if (i) it pays and does not withhold any amounts that are conceded to be correct, (ii) it provides to the other party written notice of its intent to withhold such amount and a detailed statement of the reasons, and (iii) within fifteen (15) days after receiving notice from the party submitting the bill of a failure to make payment, the party that has been billed furnishes good and sufficient surety bond guaranteeing payment to the party submitting the bill of the amount in dispute.

6.5 Both Parties shall have the right at any reasonable time, after giving reasonable notice, to examine the books and records of the other Party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made. If any such examination reveals, or if either Party discovers, any error or inaccuracy in its own or the other Party's statement, payments, calculations or determinations, then adjustments and corrections shall be made as promptly as practicable thereafter; provided, however, that no adjustment or correction shall be made on or with respect to any error or inaccuracy which is discovered more than one (1) year after such statement, charge, computation or demand was made.

## **7. Notices and Payments**

Except as otherwise provided, all notices, requests, demands, statements, bills or payments which either Party is required or desires to give the other in connection with any Arbitrage Transaction or Secondary Transaction, shall be in writing, delivered in person or by United States Mail, or by telex, telecopy or other similar means, and shall be considered duly delivered upon receipt at the addresses below or at such other addresses as may hereunder be furnished by one Party to the other in writing:

Dartmouth Power Associates Limited Partnership

Correspondence and Invoices

Dartmouth Power Associates  
One Energy Road  
N. Dartmouth, MA 02747  
Phone: 508-998-8515x127  
Fax: 508-998-7478

Payments (by Wire):

Dartmouth Power Associates Limited  
Partnership Project Deposit Account  
The Toronto Dominion Bank - Houston  
Account No. 2159251/2000352  
ABA No. 026003243  
Reference Dartmouth Power Account  
No. 2218712

Commonwealth Electric Company

Correspondence, Invoices

Commonwealth Electric Company  
2421 Cranberry Highway  
Wareham, MA 02571  
Phone: 508-291-0950  
Fax: 508-291-6275

Payments (by Wire)

Commonwealth Electric Company  
Baybank  
ABA No. 011001742  
ACCT No. 14770812  
After transfer notify:  
Kathleen Dizoglio (508-291-0950 x4456)

Each Party shall provide the other with the name and telephone number of a 24-hour available contact person.

**8. Force Majeure**

8.1 Except with regard to a Party's obligation to make payments due under the Power Agreement, neither Party shall be liable to the other for any failure to perform hereunder to the extent such performance was prevented by an event of Force Majeure. A Party shall not be relieved, however, of its liability (a) unless such Party gives written notice (including by facsimile) and full particulars of the event of Force Majeure to the other Party as soon as practicable after the occurrence of the cause relied on, including, without limitation, expected duration of the event, (b) to the extent such failure is the result of its negligence or willful misconduct, by act or omission, or (c) to the extent of its failure to use due diligence to remedy the situation and remove the cause of the Force Majeure in an adequate manner and with all reasonable dispatch. The failure of either Party to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered negligence or failure to use due diligence to remedy the situation, nor shall settlement or prevention of such strike or controversy be deemed to be within the reasonable control of the affected Party.

8.2 The term "Force Majeure" as employed herein shall mean any event beyond the reasonable control of the Party relying on such event, including, but not limited to acts of God; strikes, lockouts, or other industrial disturbances; acts of the

public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; restraints of governments; inability of either party to obtain necessary materials, supplies or permits due to existing or future rules, orders and laws of governmental authorities (both federal and state); civil disturbances; explosions; sabotage; breakage of or accidents to machinery, equipment or lines of pipe; equipment malfunctions; freezing of machinery, equipment, wells or lines of pipe; acts of civil or military authority (including, but not limited to, acts of courts or administrative or regulatory agencies); the curtailment of service or failure to perform by one of Dartmouth's gas suppliers or transporters; provided, however, that the following shall not be considered an event of Force Majeure: an unfavorable change in economic conditions or financial status.

## **9. Term**

This Agreement shall remain in effect for a period of one year from the date hereof, unless terminated by either Party on thirty days' prior notice to the other Party; provided, however, that if one or more Confirmation Notice is in effect, termination shall not be effective for any such Confirmation Notice until the expiration of the effective period of such Confirmation Notice.

## **10. Confidentiality**

Each Party agrees that it will maintain this Agreement, and all parts and content hereof and all documents and information produced pursuant to the terms hereof, in strict confidence, and that it will not cause or permit disclosure of same to any third party without the express written consent of the other Party (such consent shall not be unreasonably withheld), except that each party may disclose this Agreement and all parts and content hereof to its lenders, and any prospective lenders, in connection with its existing and future financing arrangements, and except as provided below. Disclosure is also permitted in the event and only to the extent that the disclosing Party is required by a court or agency exercising jurisdiction over that Party or the subject matter hereof, to so disclose.

## **11. Miscellaneous Provisions**

11.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws.

11.2 This Agreement shall be subject to all valid laws, orders, rules and regulations of any duly constituted State, Federal or other governmental authorities having jurisdiction.

11.3 This document, including the Exhibits and each Confirmation Notice, constitutes the entire Agreement between the Parties with respect to the subject matter hereof.

11.4 No modification, amendment, or change herein shall be enforceable unless reduced to writing and executed by both Parties.

11.5 No assignment of this Agreement or any of the rights or obligations hereunder shall be made by either Party unless the other Party has consented in writing thereto, which consent shall not be unreasonably withheld. ComElectric acknowledges that the rights and obligations of Dartmouth under this Agreement have been pledged and assigned by Dartmouth as security to Dartmouth's lenders that have or may provide financing of the Dartmouth Facility ("the Lenders"). ComElectric hereby consents to such pledge and assignment, and agrees for the benefit of the Lenders, that its Consent of Approval Party dated as of September 5, 1989, shall apply to this Agreement with the same force and effect as if this Agreement had been specifically listed as Collateral (as defined therein) thereunder.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

**DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP**

By: EMI Dartmouth Inc., General Partner

By: 

Name: James D. Saint

Title: V.P.

**COMMONWEALTH ELECTRIC COMPANY**

By: 

Name: JAMES J. KEARNEY

Title: V.P.

### Confirmation Notice Energy Arbitrage Transaction

Transaction Date: October 30, 1996Transaction No. 1**Natural Gas Sale**

Seller	Dartmouth Power
Buyer	AIG Trading Corporation
Sales Volume (MMBtu/d)	13,877
Total Volume (MMBtu)	416,310
Sales Price US\$/MMBtu	\$3.40
Delivery Point(s)	Algonquin/Upstream Meters
Term (days)	30
Deliveries	From: Hour: 0800 Day: 11/01/96
	To: Hour: 0800 Day: 12/01/96

**Replacement Energy Cost**

Replacement Energy Provider	Commonwealth Electric
Replacement Energy Cost	\$28 per MWh
Replacement Energy Quantity	48,870 MWh
Dispatch %	95%
Term	720 hours
Deliveries	From: Hour: 0800 Day: 11/01/96
	To: Hour: 0800 Day: 12/01/96
Dartmouth Contract Heat Rate	8583 Btu/Kwh
Dartmouth Facility Rating	67.875 MW
Temperature Adjusted MCC	November 67.875 MW

**Special Provisions:** Replacement energy (46,426.5 MW's) to be provided by ComElectric at \$28/MWh.**Comments:** Gas sale is firm, must-take, subject to Yankee Gas call (see Schedule A to the Natural Gas Purchase and Sale Agreement for the details of the gas sale).**Projected Revenues**Gas Sales Revenue

Sales price	\$3.40 per MMBtu
Daily volume	13,877 MMBtu/day
Days	30
Gas Revenue	\$1,415,454
less unit gas cost (VFSR+VTTR)	\$1.70 per MMBtu
Daily volume	13,877 MMBtu/day
Days	30
Gas Cost	\$707,727
Gas Revenues - Gas Cost	\$707,727
times Dispatch %	95%
Profit	\$672,341
Energy penalty (at right)	\$622,528
Net profit	\$49,812
times 50%	50%
Shared Profit	\$24,906

Replacement Energy Costs

Energy cost (Dartmouth)	\$1.70 per MMBtu
Contract heat rate	8583 Btu/Kwh
Energy cost (Dartmouth)	\$14.59 per MWh
Replacement energy cost	\$28.00 per MWh
Energy loss (gain)	\$13.41 per MWh
Temp. Adj. capacity	67.875 MW
Replacement hours	720
Energy	48,870 MWh's
times Dispatch %	95%
Energy Penalty	\$622,528

ComElectric Payment:

Shared profit	\$24,906
Energy penalty	\$622,528
Total	\$647,434

**Secondary Transaction Provisions**Check one:

- ☒ Dartmouth will make its facility available for dispatch on 0.05% Sulfur #2 oil or substitute gas for the term. ComElectric will dispatch the facility at the rate of \$70.00 per MWh for electric energy produced at the facility during the term. ComElectric will pay Dartmouth at a rate of \$70.00 per MWh (7¢ per KWh) for electric energy produced at the facility. Other provisions are contained in Section 5.3 of the Master Energy Arbitrage Agreement.
- ☐ The capacity and energy of the Dartmouth facility will be sold to a third party and the net profits will be shared 50/50 between Dartmouth and ComElectric. The terms of the sale will be specified in an Exhibit B to the Master Energy Arbitrage Agreement.

This Exhibit A becomes a part of and is subject to the terms and conditions of the Master Energy Arbitrage Agreement dated October \_\_, 1996 between the Parties.

AGREED and ACCEPTED this \_\_ day of \_\_\_\_, 1996

AGREED and ACCEPTED this \_\_ day of \_\_\_\_, 1996

By: E.W. Rilkoff  
Title: Manager of Fuel & Power Marketing  
For: DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
For: COMMONWEALTH ELECTRIC COMPANY

# **Attachment AG-1-1(c)**

## ENERGY ARBITRAGE AGREEMENT

This Agreement is entered into as of the 5<sup>th</sup> day of November, 1999 between DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP ("Dartmouth"), a Massachusetts limited partnership, and COMMONWEALTH ELECTRIC COMPANY ("ComElectric"), a Massachusetts corporation, both referred to as "Party" or "Parties." The Parties hereby agree as follows:

### 1. Purpose and Scope of Agreement

1.1 This Agreement shall serve as the "Master Agreement" governing energy arbitrage transactions (each an "Arbitrage Transaction") to be entered into between the Parties which shall be described more specifically by energy arbitrage confirmation notices, (each a "Confirmation Notice"), in the general form attached hereto as Exhibit "A." This Agreement is subject to the terms of the Power Agreement, except as otherwise specifically provided herein.

1.2 Each Arbitrage Transaction shall be documented by a Confirmation Notice which shall become part of this Agreement. Any discrepancy between this Agreement and any Confirmation Notices shall be resolved by relying upon the Confirmation Notices. Both Parties recognize that any number of Confirmation Notices may be in effect and operation at one time; and that each shall operate independently of one another unless otherwise agreed by the Parties.

1.3 This Master Agreement shall allow and govern arrangements by the Parties to sell the capacity and output of the Dartmouth facility (each a "Secondary Transaction") when electricity is purchased by ComElectric to replace its output.

### 2. Definitions

2.1 "Business Day" shall mean any day other than a Saturday, Sunday, or legal holiday in Boston, Massachusetts.

2.2 "Gas" shall mean natural gas purchased by Dartmouth in order to satisfy its obligations under the terms of its Power Purchase Agreement between Dartmouth and ComElectric dated September 5, 1989, as amended (the "Power Agreement").

### 3. Confirmation and Notice Procedures

Prior to entering into an Arbitrage Transaction, Dartmouth will send ComElectric a fully-executed Confirmation Notice by telecopy transmission. The Confirmation Notice shall reflect the agreed-upon terms including: 1) arrangements for the sale of Gas; 2) arrangements for the purchase of replacement energy; 3) projected net and gross revenues from the Arbitrage Transaction; and 4) arrangements for the sale of the capacity and/or output of the Dartmouth facility (the Secondary Transaction). Dartmouth will provide ComElectric with documentation covering the Gas sale and Dartmouth's Gas and transportation costs. ComElectric will provide Dartmouth with documentation covering the replacement energy purchase.

### 4. Quantities

4.1 Dartmouth will sell and deliver the Gas for the term specified in the applicable Confirmation Notice.



4.2 ComElectric will purchase and receive the replacement energy for the term specified in the applicable Confirmation Notice.

## 5. Revenue Sharing

5.1 Dartmouth will pay ComElectric an "Energy Penalty" which is the difference in cost of the Dartmouth energy if the plan was dispatched under the terms of the Power Agreement, and the cost to replace the Dartmouth energy. The Parties agree to share the remaining profits after deducting the Energy Penalty (if any) on an equal, 50/50 basis. The total amount Dartmouth will pay ComElectric will be determined as the sum of:

**Shared Profit + Energy Penalty, where:**

**Shared Profit = 50% x (((Gas Revenues - Gas Cost) x (Dispatch %)) - Energy Penalty), where:**

**Gas Revenues** = the total revenues received by Dartmouth for the sale of its firm natural gas supply and transportation rights pursuant to the applicable Confirmation Notice;

**Gas Cost** = term of the Arbitrage Transaction in days x the daily gas volume x (Variable Fuel Supply Rate (in \$/MMBtu) + Variable Transportation Throughput Rate (in \$/MMBtu));

**Dispatch %** = the percentage that the Dartmouth facility is deemed to be dispatched online (excluding outages) in the absence of this Agreement, as shown in the applicable Confirmation Notice;

**Energy Penalty = (Replacement Energy Cost - Energy Cost) x Energy x Dispatch %, where:**

**Replacement Energy Cost** = \$/MWh cost to replace the Dartmouth energy as shown in the applicable Confirmation Notice;

**Energy Cost** = Variable Fuel Supply Rate (assuming index adjustment and accounting for "pipeline gas" amounts) + Variable Fuel Transportation Throughput Rate (assuming sum of pipeline transportation rates) expressed in ¢/kwh x 1000;  
where:

Variable Fuel Supply Rate and Variable Fuel Transportation Throughput Rate for the period are as defined in the Power Agreement and calculated as if this Master Energy Arbitrage Agreement were not in effect;

**Energy** = the amount of energy required to replace the output of the Dartmouth facility calculated as the number of hours times the temperature adjusted maximum claimed capability for the Dartmouth facility;

Provided, however, that the variable Fuel Supply Rate and the Variable Fuel Transportation Throughput Rate for the Term shall only reflect charges actually incurred by Dartmouth, and in no event shall reflect charges greater than those that would otherwise be incurred by ComElectric under the Power Agreement, unless Dartmouth and ComElectric mutually agree otherwise.

A sample calculation showing the above calculations and Confirmation Notice is attached.

5.2 The Parties agree that the following adjustments may impact the revenue calculations and the revenue sharing between the Parties but such calculations shall not be subject to adjustment for any other reason unless otherwise agreed to:

(a) For any Gas volumes called on by Yankee Gas Company under the terms of its Winter Peaking Firm Gas Sale Agreement with Dartmouth dated as of June 6, 1994, the Gas Revenues will include the price of Gas sold to Yankee and the volumes taken by Yankee. The price of Gas sold to Yankee will be the No. 2 oil price that Dartmouth receives from Yankee Gas under the Winter Peaking Firm Gas Sale Agreement, which shall be documented by Dartmouth and disclosed to ComElectric.

(b) If a transporting pipeline claims force majeure or puts in place a pipeline restriction or limitation (such as not allowing secondary deliveries whereby delivery of gas which is the subject of an executed Confirmation Notice is precluded) affecting deliveries of gas to Dartmouth, the Gas Revenues will reflect the price that the Gas is sold for once the event of force majeure or the limitation or restriction is removed or the price the gas is sold for if an alternate delivery point is used. If Dartmouth is required to use an alternate delivery point because of an event of force majeure or pipeline restriction or limitation on a transporting pipeline, Gas Revenue will reflect the price received by Dartmouth at the alternate delivery point.

(c) If the Dartmouth facility is required by ISO-NE to undergo a ISO-NE claimed capability test, then the facility will be dispatched as if no Arbitrage Transaction were in effect. The facility will be dispatched and ComElectric will pay for the electric energy as per the terms of the Power Agreement.

(a) Dartmouth or its designee shall have the right to sell the energy and operable capability into the ISO-New England markets or to a third party. Any proceeds from such sale shall be to the account of Dartmouth Power. The installed capability of the facility shall remain with ComElectric.

5.4. During the term of each Arbitrage Transaction documented by a Confirmation Notice, ComElectric will pay no gas commodity charges or transportation commodity charges under the Power Agreement. For further clarity, ComElectric will not pay Dartmouth for any variable charges related to the purchase and transportation of natural gas under the gas supply and transportation contracts specified in the Power Agreement. All other payments will continue to be made to Dartmouth and by Dartmouth under the Power Agreement.

5.5. During the term of each Arbitrage Transaction documented by a Confirmation Notice, Dartmouth will not have Extra Capacity, as defined in Section 3 of the Third Amendment to the Power Agreement.

## 6. Billing and Payment

6.1 By the tenth (10<sup>th</sup>) day of each calendar month following a month in which the Parties entered into an Arbitrage Transaction(s), ComElectric will provide Dartmouth with a written statement showing the Energy Replacement Cost. By the fifteenth (15<sup>th</sup>) day of each calendar month following a month in which the Parties entered into an Arbitrage Transaction(s), Dartmouth shall provide ComElectric with a written statement showing the total amount due from Dartmouth to ComElectric in connection with the Arbitrage Transaction(s).

6.2 Dartmouth will pay to ComElectric the stated total amount due by Automated Clearing House Clearing House transfer or wire transfer, pursuant to ComElectric's invoice instructions, by the last day of the calendar month in which the statement was rendered, provided that if the last day is not a Business Day, payment is due on the next Business Day following that date.

6.3 Any payments due to Dartmouth from ComElectric will be governed by and paid in accordance with the terms of the Power Agreement.

6.4 In the event of a bona fide dispute regarding an amount owed, the Party that has been billed such amount shall have the right to withhold the amount in dispute until such dispute is settled or resolved, if (i) it pays and does not withhold any amounts that are conceded to be correct, (ii) it provides to the other party written notice of its intent to withhold such amount and a detailed statement of the reasons, and (iii) within fifteen (15) days after receiving notice from the party submitting the bill of a failure to make payment, the party that has been billed furnishes good and sufficient surety bond guaranteeing payment to the party submitting the bill of the amount in dispute.

6.5 Both Parties shall have the right at any reasonable time, after giving reasonable notice, to examine the books and records of the other Party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made. If any such examination reveals, or if either Party discovers, any error or inaccuracy in its own or the other Party's statement, payments, calculations or determinations, then adjustments and corrections shall be made as promptly as practicable thereafter; provided, however, that no adjustment or correction shall be made on or with respect to any error or inaccuracy which is discovered more than one (1) year after such statement, charge, computation or demand was made.

## 7. Notices and Payments

Except as otherwise provided, all notices, requests, demands, statements, bills or payments which either Party is required or desires to give the other in connection with any Arbitrage Transaction or Secondary Transaction, shall be in writing, delivered in person or by United States Mail, or by telex, telecopy or other similar means, and shall be considered duly delivered upon receipt at the addresses below or at such other addresses as may hereunder be furnished by one Party to the other in writing:

### Dartmouth Power Associates Limited Partnership

#### Correspondence and Invoices

Dartmouth Power Associates  
One Energy Road  
N. Dartmouth, MA 02747  
Phone: 508-998-8515, ext. 127  
Fax: 508-998-7478

#### Payments (by Wire):

Dartmouth Power Associates Limited  
Partnership Project Deposit Account  
The Toronto Dominion Bank - Houston  
Account No. 2159251/2000352  
ABA No. 026003243  
Reference Dartmouth Power Account  
No. 2218712

Commonwealth Electric Company

Correspondence and Invoices

Commonwealth Electric Company  
NSTAR  
MS P-1603  
800 Boylston Street  
Boston, MA 02195  
Phone: 617-424-3408  
Fax: 617-424-3407

Payments (by Wire):

Commonwealth Electric Company  
BankBoston  
ABA No. 011000390  
ACCT No. 74132410  
After transfer notify:  
Kathleen Dizoglio (508-291-0950 x 4456)

Each Party shall provide the other with the name and telephone number of a 24-hour available contact person.

8. Force Majeure

8.1 Except with regard to a Party's obligation to make payments due under the Power Agreement, neither Party shall be liable to the other for any failure to perform hereunder to the extent such performance was prevented by an event of Force Majeure. A Party shall not be relieved, however, of its liability (a) unless such Party gives written notice (including by facsimile) and full particulars of the event of Force Majeure to the other Party as soon as practicable after the occurrence of the cause relied on, including, without limitation, expected duration of the event, (b) to the extent such failure is the result of its negligence or willful misconduct, by act or omission, or (c) to the extent of its failure to use due diligence to remedy the situation and remove the cause of the Force Majeure in an adequate manner and with all reasonable dispatch. The failure of either Party to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered negligence or failure to use due diligence to remedy the situation, nor shall settlement or prevention of such strike or controversy be deemed to be within the reasonable control of the affected Party.

8.2 The term "Force Majeure" as employed herein shall mean any event beyond the reasonable control of the Party relying on such event, including, but not limited to acts of God; strikes, lockouts, or other industrial disturbances; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; restraints of governments; inability of either party to obtain necessary materials, supplies or permits due to existing or future rules, orders and laws of governmental authorities (both federal and state); civil disturbances; explosions; sabotage; breakage of or accidents to machinery, equipment or lines of pipe; equipment malfunctions; freezing of machinery, equipment, wells or lines of pipe; acts of civil or military authority (including, but not limited to, acts of courts or administrative or regulatory agencies); the curtailment of service or failure to perform by one of Dartmouth's gas suppliers or transporters; provided, however, that the following shall not be considered an event of Force Majeure: an unfavorable change in economic conditions or financial status.

9. Term

This Agreement shall remain in effect for a period of one year from the date hereof, unless terminated by either Party on thirty days' prior notice to the other Party; provided, however, that if one or more Confirmation Notice is in effect, termination shall not be effective for any such Confirmation Notice until the expiration of the effective period of such Confirmation Notice.

## 10. Confidentiality

Each Party agrees that it will maintain this Agreement, and all parts and content hereof and all documents and information produced pursuant to the terms hereof, in strict confidence, and that it will not cause or permit disclosure of same to any third party without the express written consent of the other Party (such consent shall not be unreasonably withheld), except that each party may disclose this Agreement and all parts and content hereof to its lenders, and any prospective lenders, in connection with its existing and future financing arrangements, and except as provided below. Disclosure is also permitted in the event and only to the extent that the disclosing Party is required by a court or agency exercising jurisdiction over that Party or the subject matter hereof, to so disclose.

## 11. Miscellaneous Provisions

11.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws.

11.2 This Agreement shall be subject to all valid laws, orders, rules and regulations of any duly constituted State, Federal or other governmental authorities having jurisdiction.

11.3 This document, including the Exhibits and each Confirmation Notice, constitutes the entire Agreement between the Parties with respect to the subject matter hereof.

11.4 No modification, amendment, or change herein shall be enforceable unless reduced to writing and executed by both Parties.

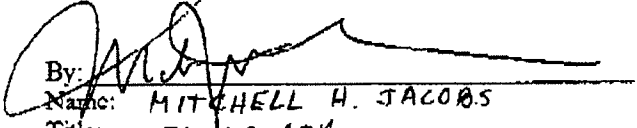
11.5 No assignment of this Agreement or any of the rights or obligations hereunder shall be made by either Party unless the other Party has consented in writing thereto, which consent shall not be reasonably withheld. ComElectric acknowledges that the rights and obligations of Dartmouth under this Agreement have been pledged and assigned by Dartmouth as security to Dartmouth's lenders that have or may provide financing of the Dartmouth Facility (the "Lenders"). ComElectric hereby consents to such pledge and assignment, and agrees for the benefit of the Lenders, that its Consent of Approval Party dated as of September 5, 1989, shall apply to this Agreement with the same force and effect as if this Agreement had been specifically listed as Collateral (as defined therein) thereunder.

11.6 Dartmouth will not sell more than its delivered gas contract volume on any pipeline (less pipeline fuel losses) as defined in Section 2.3 of the Power Agreement. Depending on the point of sale, the total sales volume may be more or less than Dartmouth's 14,010 MMBtu/day of delivery capacity on Algonquin.


IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP

By: EMI Dartmouth Inc., General Partner

By:   
Name: MITCHELL H. JACOBS  
Title: TREASURER

COMMONWEALTH ELECTRIC COMPANY

By:   
Name: Douglas S. Horan  
Title: Senior Vice President, Strategy, Law and Policy

**Exhibit A**

## Transaction No. 1

Replacement Energy Provider	
Replacement Energy Cost	28.00 per MWh
Replacement Energy Quantity	99,422 MWh
Dispatch %	95%
Term	1464 hours
Deliveries	From: Hour end: 0100 Day: 11/01/99
	To: Hour end: 2400 Day: 12/31/99
Dartmouth Contract Heat Rate	8563 Btu/Kwh
Dartmouth Facility Rating (20 F)	67.911 MW
Temperature Adjusted MCC	Nov 07.676, Dec 07.947
	Jan 68.136, Feb 67.979
	Mar 67.013 MW

<b>Special Provisions:</b>	Gas sale is firm, must-take, subject to Yankee Gas call. Electricity purchased is firm, must-take.
<b>Comments:</b>	On any day that the ISO-NE energy clearing price is below the Dartmouth variable energy cost (estimated to be \$17.68/MWh) for four consecutive hours, Dartmouth will pay Comelectric the difference between the variable energy cost and the ISO-NE energy clearing price times 67.911 MW times the number of hours the ISO-NE energy clearing price is below the Dartmouth energy cost. Dartmouth or its agent will enter into a financial swap to manage this risk. The [\$ ] cost of the swap will be added to the replacement energy cost in the above calculation.

ComElectric Payment:	
Shared profit	\$215,414
Energy penalty	<u>\$928,751</u>
Total	\$1,144,165

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
For: COMMONWEALTH ELECTRIC COMPANY

Information Request AG-1-7

Please indicate whether any of the attorneys of Keegan, Werlin and Pabian have provided or is providing services to Dartmouth or any of its owners.

Response

The Company objects to this request insofar as it seeks information that is not relevant to the Department's determination in this proceeding. Whether attorneys from Keegan, Werlin & Pabian, LLP ("KWP") are providing or have provided legal services to Dartmouth is not material to the disposition of the case and/or the extent to which the Company's proposal maximizes the mitigation of transition costs associated with the OSP power-purchase agreement.

Without waiving the above-stated objection, no attorneys at KWP are presently engaged or have been engaged to provide legal services to Dartmouth or any of its owners.



Information Request AG-1-8

Please provide the workpapers, calculations, formulas, assumptions, and supporting documentation for the use of the 7.82 percent discount rate used by Concentric.

Response

As stated in Exhibit DTE-1-31 in D.T.E. 04-60, in the response to Information Request AG-1-8 in D.T.E. 04-61 and in Exhibit AG-1-8 in D.T.E. 04-68:

The discount rate of 7.82% represents the Company's weighted average cost of capital based on a capital structure of 50% debt and 50% equity, and after-tax cost rates of 3.6% and 12.0% for debt and equity respectively.

Please also refer to Exhibit DTE-2-2 in D.T.E. 04-60, and Mr. Lubbock's testimony in D.T.E. 04-60 (Tr. at 92-106).

Information Request AG-1-29

Please provide copies of the monthly invoices for the last 24 months associated with the Dartmouth contracts along with all associated calculations and supporting documentation.

Response

Please see Attachment AG-1-29 **BULK** for the monthly invoices and detail for the last 24 months associated with the Dartmouth contracts.

Information Request AG-1-30

Please provide the history of Dartmouth's heat rates for each month of operation since the start date.

Response

**CONFIDENTIAL ATTACHMENT**

Please see Attachment AG-1-30 **CONFIDENTIAL** for the monthly heat rates for the Dartmouth facility. Data for the months of July and October 1992, December 1996, along with January and March 1998 are unavailable.